IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11587 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAMNAGAR MUNCIPAL CORPORATION - Petitioner(s)
Versus
NILESH H ACHARYA & 1 - Respondent(s)

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Appearance :
MR JR NANAVATI for Petitioner(s) : 1,
MR MANOJ N POPAT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 10/08/2006

ORAL JUDGMENT

1. Heard the learned Advocate, Mr.J.R.Nanavati, appearing on behalf of petitioner and learned

Advocate, Mr.Manoj Popat, appearing on behalf of respondent.

2. The petitioner Corporation has challenged the award passed by Labour Court, Jamnagar in Old Reference No.1445 of 1985 (New No.305 of 1990) dated 10.8.1994. The Labour Court has set aside the termination order and granted the difference of salary w.e.f. 12.6.1986 till the workman is reinstated in service by Corporation between receiving the salary from Sales Tax Department and entitlement in Corporation.

3. Learned Advocate, Mr.Nanavati, submitted that respondent workman was appointed on probation for a period of six months with condition that in case if unsatisfactory work is there, service of respondent workman can be terminated by Corporation without notice. He also submitted that during the period of six months, work was not found to be satisfactory and ultimately, the Corporation has exercised its power as per order

of appointment and terminated the service of the respondent workman. There is no stigma attached to termination and there is no allegation in the order of termination passed by Corporation. The service of respondent was terminated on efflux of time as period of six months was over. Accordingly, his service came to an end as per appointment order. Learned Advocate, Mr.Nanavati, submitted that service of the probationer can be terminated without notice by the Corporation and the Corporation is also entitled to terminate the service in case if work is not found satisfactory. Therefore, unsatisfactory work cannot be considered to be a stigma which requires detailed inquiry from the Corporation. Therefore, the Labour Court has committed gross error in granting the relief of reinstatement when workman is already appointed in Sales Tax Department. He also submitted that the reference is of the year 1985 and the evidence was given by workman in the year 1992 and on that basis, the difference of salary has been ordered by the

Labour Court. For that, there is no discussion. Therefore, this being unreasoned direction, the award passed by Labour Court is required to be set aside.

4. Learned Advocate, Mr.Popat, submitted that no doubt, workman has been appointed in Sales Tax Department w.e.f. 12.6.1986 and his service was terminated on the basis of allegation on 30.4.1985. He submitted that no reasonable opportunity was given by the Corporation before terminating the service of the respondent workman. Therefore, the order of termination is contrary to the principles of natural justice. He also submitted that no departmental inquiry was initiated before terminating the service of workman and, therefore, the Labour Court has rightly exercised the power and granted the relief. For that, the Labour Court has not committed any error which requires any interference by this Court under Article 227 of the Constitution of India.

5. I have considered the submissions made by both the learned Advocates and have also perused the award passed by the Labour Court. The facts of this case are not much in dispute between the parties. The respondent workman was selected by Staff Selection Committee of the Corporation in the post of Supervisor. He was appointed in the scale of Rs.425-700 on probation for a period of six months. According to Condition No.6 of appointment order, in case if during the probation period, work is not found satisfactory, then, the service of the respondent workman can be terminated by Corporation without notice. The respondent workman has reported on 21.9.1984 and his service was terminated on 30.4.1985. Looking to the order of termination, no allegation / stigma has been attached or it becomes foundation of termination order. The Corporation was right in terminating the service of the workman after completion of probation period. It is for the Corporation to continue or extend the period or

to confirm the workman. But, it is not a legal right of the workman to demand or entitlement of the confirmation during the probation period. It is for the employer to issue positive order in favour of workman about confirmation. In this case, no positive order of confirmation has been issued by petitioner. Therefore, in light of these fact, there is no necessity to give any reasonable opportunity to the workman because there is no stigma or allegation attached to the order. Therefore, the petitioner Corporation has rightly terminated the service after completion of period of probation. For that, no inquiry is necessary and allegation / stigma is not become the foundation of order of termination. Therefore, this aspect has not been considered properly by the Labour Court and has set aside the termination order only on the ground that reasonable opportunity was not given to the workman which is basically an error committed by the Labour Court, which is contrary to the settled principles laid down by the Hon'ble

Supreme Court. (See : Registrar, High Court of Gujarat and another v. C.G.Sharma, reported in (2005) 1 SCC 132 and Abhijit Gupta v. SNB National Centre, Basic Sciences & Ors., 2006 (4) Scale 380.)

6. Therefore, according to my opinion, the Labour Court has committed gross error in granting difference of salary between Sales Tax salary and Corporation salary that itself is wrong. When workman is already appointed on 12.6.1986 by Sales Tax Department, there is no question of granting any difference of salary to the workman concerned. The Labour Court has not given any reason in support of its conclusion for granting the difference of salary and, therefore, that direction is also required to be quashed and set aside. Accordingly, the award passed by Labour Court, Jamnagar in Old Reference No.1445 of 1985 (New No.305 of 1990) dated 10.8.1994 is hereby quashed and set aside. Rule made absolute.

(H.K.RATHOD,J.)

(vipul)